IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.L.P..No. 227 of 2007()

STC.346/2006 of ADDL.C.J.M.,THALASSERY

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PETITIONER/COMPLAINANT::

K.V.LAKSHMANAN, S/O.KRISHNAN NAIR, AGED 47 YEARS, RESIDING AT "SONA", PARUNTHATTIL, P.O.ERANHOLI, THALASSERY.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

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1. K.P.SURESH, S/O.NARAYANAN, PRASADAM, KIZHAKKA VEETTIL, P.O.URUVACHAL, ELAKUZHI, NIRMALAGIRI, THALASSERY TALUK

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MUHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 227 of 2007

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Dated this the 5th day of June, 2007

O R D E R

This is a petition to grant special leave to appeal filed by the complainant against the judgment in S.T.No.346/2006 on the file of the Additional Chief Judicial Magistrate, Thalassery. As per the case filed by the appellant, the 1st respondent had received an amount of Rs.80,000/- from the petitioner and in discharge of the said amount, he had issued a cheque in favour of him and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. Then after issuing the statutory notice, the complaint has been filed. To prove the case against the 1st respondent the appellant examined PW1 and Exts.P1 to P6 were marked. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the allegation. After considering the entire evidence the trial court found that "in the absence of the complainant giving evidence in this case to support his claim, it will not be safe to conclude that the presumptions under sections 139 and 118 of the Negotiable Instruments Act can be invoked in this case against the accused". The trial court also found that PW1 was not a competent person to depose the case set up by the

appellant. Hence, the 1st respondent was acquitted under section 255(1) Cr.P.C.

2. The appellant did not entered into the box and gave evidence to support his case. The evidence of PW1 has nothing to do with the allegation raised against the 1st respondent. It has come out in evidence that the complaint was originally filed by the appellant and subsequently he executed Ext.P1 power of attorney in favour of PW1 to represent him.

3. Having considered the arguments of the learned counsel for the appellant and having perused the materials available to this Court, this Court is of the view that the finding entered by the trial court that in the absence of the appellant giving evidence to support his claim, it would not be safe to conclude that the presumption under sections 139 and 118 of the Negotiable Instruments Act could be invoked against the 1st respondent. Hence, the impugned judgment requires any interference by this Court. Accordingly, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. 227/2007

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ORDER

5-6-2007